

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAVID R. MASON)
)
v.) NO. 3-15-0602
) JUDGE CAMPBELL
JEH JOHNSON, Secretary, Department)
of Homeland Security)

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 16) and Objections filed by the Defendant (Docket No. 19).

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, and the file. The Objections of the Defendant are overruled, and the Report and Recommendation is adopted and approved.

Defendant argues that Plaintiff's Complaint fails to set forth an adverse employment action. For purposes of a motion to dismiss, the Court must take all of the factual allegations in the complaint as true. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Id.*

Although, as the Magistrate Judge notes, Plaintiff's Complaint is sparse and may be subject to summary judgment, the Court finds that, for purposes of a Motion to Dismiss, Plaintiff's Complaint is sufficient. With regard to Defendant's *de minimis* argument, the case cited by Defendant says simply that there *may* be a *de minimis* exception for temporary actions. In addition,

Plaintiff's Complaint indicates that the discriminatory acts "are still being committed by Defendant." Docket No. 1, p. 3.

Accordingly, the Report and Recommendation is approved, and Defendant's Motion to Dismiss (Docket No. 10) is DENIED.

IT IS SO ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE